

III. FULL IMPLEMENTATION OF THE § 271 CHECKLIST MUST BE ASSURED BEFORE INTERLATA ENTRY CAN BE APPROVED.

31. The conditions necessary for local competition must be addressed prior to interLATA entry, and the Commission should not assume that it can "fix" things after entry has occurred. As Mr. Notebaert acknowledges, after entry, Ameritech will have absolutely no incentive to go along with controls on its activities in any market since it will already have obtained entry into precluded markets --what it has been attempting to achieve since the first Customers First filing in 1993. The Act wisely requires full implementation of all checklist items before interLATA entry.

32. The next phase in Ameritech's regulatory agenda after interLATA authority has been granted will likely be a total deregulation agenda. Ameritech will likely argue to the Legislature, the Congress, and this Commission that, with "competitors" in all markets, market forces will control and regulation will be both superfluous and destructive to competition. In that case, the Commission would be under pressure to reduce its regulatory activities and resources and perhaps would lose some authority to regulate.

33. Plainly, any necessary conditions must be imposed on Ameritech before interLATA entry because there is no assurance that the Commission will

have the ability, the authority, or the resources to impose such conditions after interLATA entry.

**IV. MEASURES MUST BE ESTABLISHED FOR ENSURING FULL
IMPLEMENTATION OF THE §271 CHECKLIST ITEMS.**

34. Full implementation of the § 271 checklist should be measured in terms of reliability, certainty and enforceability.

35. By "reliable," I mean that the checklist must be implemented in such a manner that the Commission and new entrants can rely on the fact that the "terms of service" resulting from the checklist are actually available and being provided in the marketplace, and that new entrants, such as AT&T and others, can make investments and build businesses around the continued existence of those terms, knowing that the terms will not change.

36. Thus, "reliability" means that the available terms are clearly defined, actually available in sufficient capacity when they are supposed to be, furnished on an operational parity basis (i.e., on the same terms as they are available to Ameritech and other carriers), and that they cannot be withdrawn or be made unavailable at Ameritech's discretion.

37. An additional concern is one that is naturally associated with new and untried systems. Before it can be assumed that everything associated with the interface between Ameritech and new entrants will work right and that competing carriers will be able to process orders in the volumes required, have their customers' service repaired satisfactorily, receive accurate bills, and all the other hallmarks of high-quality service, Ameritech's operating systems need to be tested.

38. In particular, I recommend that a number of system tests be held with the involvement of the Staff, any new entrants and one or more Commission-appointed outside experts to verify that the operating systems will, in fact, work and will work at an operational parity level. Moreover, because of the complexity of these systems, Ameritech should be required to demonstrate a meaningful period of operational experience with these systems in the marketplace. Only then can this Commission reasonably verify the reliability of these systems.

39. Because this is the commencement of a multi-billion dollar business, and because of the serious consequences for competition if the systems supporting interLATA entry for Ameritech work but the systems supporting local market entry for others do not, it is worth the effort to make sure the operating systems for local service are actually working and will, therefore, continue to do so, before the Commission recommends support for Ameritech's interLATA entry. Indeed, the Act requires no less, requiring that checklist conditions be fully implemented and one or more competing carriers be operational.

40. In addition, such a process will provide the Commission with valuable information in the event that disputes arise in the future that result in complaints that the Commission must resolve.

41. AT&T depends on Ameritech to process orders that switch customers from Ameritech service to AT&T service. Ameritech must have systems in place so that they meet the competitors' level of demand at any point in time. If Ameritech systems can not process the requests of all of those customers wishing to change their local services provider, then those Ameritech systems are not actually up and running in a manner that is reliable, and the checklist is not met. If the Ameritech systems prove unreliable, new local service providers would then have to scale back business plans, scrap advertising campaigns, and operate in a manner that is less efficient and more expensive than they had anticipated.

42. If, at the same time, Ameritech systems to switch customers to itself in the interLATA market are up and running and Ameritech is able to process all of the customer requests for a change of interLATA provider, then there would be a serious competitive imbalance between the ability to provide local customers with competitive alternatives and Ameritech's ability to leverage its local position into its new interLATA markets.

43. The issues raised in Illinois in a recent informal complaint against Ameritech concerning the provisioning of unbundled loops and the disparity in installation intervals between Ameritech's own retail operations and the network elements it will provide competitors raises the same concerns. As the complainant,

Consolidated Communications Telecom Services, Inc. ("CCTS"), has explained, it is impossible to build a business when Ameritech's performance as a supplier cannot be relied upon.

44. I attach as Exhibit JJP-5 CCTS' informal complaint to the Illinois Commission along with a copy of the statement submitted by CCTS to the Commission in connection with the Notice of Inquiry phase of this docket as Exhibit JJP-6. While CCTS has subsequently entered into an interconnection agreement with Ameritech, the agreement has only recently been approved and it is too early to know if services provided by Ameritech pursuant to it will resolve CCTS' concerns. It will depend on how Ameritech performs under the contract.

45. The amount of investment and resources required for any new entrant to get into the local business is extensive. AT&T, for example, has been building a marketing organization, a network organization, and supporting organizations and gearing them to the local service business. These new organizations must develop processes unique to the local services business. To do so, it is essential that they understand the "inputs" and the "outputs" that will be involved in interfacing with Ameritech's systems so they can design their own side of the operation around those inputs and outputs. If Ameritech's inputs and outputs are not available on a reliable basis, AT&T will require much more time and incur more expense to design and implement the necessary procedures.

46. Further, because customers will not understand, or care, that any inability of AT&T to provide quality local service is due to the inadequate

performance of a supplier, the lack of reliability of those interfaces could make competition infeasible. Thus, the reliable availability of services, network elements, and interconnection that can be counted on and planned for by any new entrant is essential to the development of local competition. Each of the checklist items must be available on a reliable basis.

47. By "certainty", I mean that the new entrant must know what it is going to get from Ameritech without hedging or qualification or revisionist interpretation. Certainty means that when the Commission issues an order explaining what the terms are, that the parties can rely upon the order and not have to renegotiate or re-litigate what the order means. Certainty means that new entrants are sure that the Commission's future directives will be implemented promptly and appropriately for use by competitors.

48. However, the recent experience in Michigan has been that there is no certainty when the Commission issues an order in a major competitive case. In cases where the Commission Order has been contrary to the position recommendation of Ameritech, Ameritech has responded by interpreting the Order in its compliance tariff filing in a way that requires investigation or reopening of portions of the original case, thus delaying implementation of the decision. This Commission's experience with Ameritech and the intraLATA presubscription order is a prime example.

49. Certainty also refers to the fact that we do not know, even in this case, what exactly will be the terms that Ameritech will offer in the marketplace

for the checklist items. Ameritech has not "committed" to the terms included in the interconnection agreements with other companies. Instead, Ameritech has sought to overturn the underlying FCC regulations through appealing to the United States Court of Appeals for the 8th Circuit. See Exhibit JJP-9. Ameritech has previously indicated that if it prevails in this appeal (and, perhaps, if other ILECs prevail on issues they raise on appeal), Ameritech would seek to revise the terms included in these interconnection agreements.

50. I am not a lawyer, so I will not speculate whether Ameritech could in fact revise the terms of its agreements after approval if these court appeals were successful, but, in any event, it is plain that Ameritech is not "committed" to those terms which it currently portrays as constituting compliance with the checklist, and that any actual competition that would emerge based on these checklist conditions would be potentially "reversible" based on the success of Ameritech's attacks on the FCC order.

51. I must also add that, at the time of filing this affidavit, Ameritech has not appealed any of the Ameritech/AT&T interconnection agreement decisions of the state commissions. However, in the event Ameritech appeals the arbitration decision of any state commission, it is likely that, in any such appeal, Ameritech would seek a definition of federal law as it applies to the relationship between AT&T and Ameritech. Therefore, Ameritech could attempt to use a successful appeal in federal court of an arbitration decision in any state as a basis for modifying the interconnection agreements in Michigan.

52. While Ameritech is free to appeal whatever orders it wishes, it should at the same time present this Commission with what it actually intends to offer to competitors regardless of the outcome of the appeals, rather than what it says now it will offer only so long as it is unsuccessful in obtaining different terms from a court. The lack of a commitment to a specific set of terms injects uncertainty in the process, and necessarily negates any purported showing of checklist compliance.

53. The uncertainty over pricing of the components of local service as a result of the stay issued by the United States Court of Appeals for the Eighth Circuit makes it difficult for CLECs to make decisions regarding the most economic means to enter into the local exchange market and the possible commitment of funds for the large investments that are required. For there to be competition, the parties must know their costs, and the stay before the 8th Circuit has raised substantial questions as to whether costs will be based on the methodology set forth in the FCC's First Report and Order or some other methodology. Until this issue is resolved and the parties know the methodology on which prices will be based, it would be inappropriate to take any action on a request by an ILEC to gain authorization for in-region interLATA service.

54. There is, moreover, an additional cost issue that has emerged recently in the state jurisdictions. That issue involves the actual methodology and calculations that Ameritech has used to construct its underlying Total Element Long Run Incremental Cost ("TELRIC") studies. Ameritech states that prices, or

the methodology for establishing prices, for all checklist items have been established by Commission order, in contracts or in tariffs. However, the MPSC in three tariff proceedings and all arbitration proceedings has rejected Ameritech's cost studies as not being in compliance with TSLRIC or TELRIC methodology. In its most recent order on the subject, the Commission observed that the studies still contained flaws and allowed Ameritech's tariffs to go into effect only on an interim basis until the Commission initiated proceedings to examine TSLRIC studies is completed. Thus, in all respects, rates for unbundled elements, local traffic termination, interim number portability, and wholesale services contained in tariffs and arbitrated interconnection agreements are interim and provisional only. This Commission is fully cognizant of these problems and of the negative impact they have on potential local exchange competition. Thus, the cost and pricing areas of the interconnection agreements should be considered unresolved for reasons in addition to those before the 8th Circuit Court of Appeals.

55. By "enforceable", I mean that there are mechanisms available so that new entrants can be assured that what is supposed to be there actually will be, that is, that Ameritech can be compelled effectively and through expedited means, to provide what it has an obligation to provide. I believe it is generally acknowledged that significant questions remain concerning whether the Commission has the enforcement power to make Ameritech do anything on a timely basis that Ameritech does not want to do. The history of the early interconnection requests by new entrants and the intraLATA presubscription case

support the view that there is substantial opportunity for Ameritech to delay full and appropriate implementation of a Commission Order. In the context of day-to-day and hour-to-hour, media-ad-by-media-ad battles over customers, and in view of all new entrants' reliance on Ameritech's systems support, there is substantial concern that Ameritech can avoid its obligation to implement appropriate competitive conditions.

56. I have reviewed the major orders entered by the Michigan Public Service and the Illinois Commerce Commission that pertain to pro-competitive actions. For each of these major cases, I have calculated the time interval between the date of tariff compliance required by the order and the date on which something that appeared to be full tariff compliance by Ameritech was actually achieved. On this basis, I have constructed what I will refer to as the "average time to comply" (ATC) for Ameritech for these major orders.

57. For Michigan, I included the City Signal interconnection order (begun with a complaint by City Signal), the intraLATA presubscription dialing parity order, and the generic interconnection order. I also included Ameritech's filing of wholesale services tariffs as required by the Michigan Telecommunications Act. For Illinois, I included the Customers First/AT&T Petition order, the Resale/Platform case order, the intraLATA presubscription order, and the MFS interconnection order.

58. The ATC was 209 days, which represents the current average amount of time Ameritech has been able to delay complying with a major pro-

competitive order in these two states. Unless changes are made in the current system, one could expect a similar ATC for the arbitration decisions, and other pro-competitive Commission actions with which Ameritech does not want to comply.

59. I would note that the average interval I calculated is reduced greatly by Ameritech's decision to implement intraLATA dialing parity in Illinois as directed by the Commission even though Ameritech has waged a continuing battle in Michigan and Wisconsin to delay its ordered implementation pending interLATA entry. Also, I expect that the ATC will actually increase over time because there are still a number of these orders with which Ameritech has not yet satisfactorily complied. For the sake of the calculation, I used January 6, 1997 as the implementation date for those "pending" cases. Pending cases include the intraLATA dialing parity and generic interconnection orders in Michigan and the Customers First, Resale Platform orders in Illinois.

60. But whether it is 209 days, somewhat less or substantially more, the fact remains that the Commission's issuance of an order or Ameritech's filing of a tariff is merely the beginning rather the end of a process to provide competitors with something they can actually use to get into the market. My calculations of the ATC are shown on Exhibit JJP-7.

61. The Michigan intraLATA presubscription case is an alarming example of the extreme difficulty experienced by state commissions in enforcing orders against Ameritech in a timely manner. It also shows the lengths to which

Ameritech will go to protect its market by preventing its customers from having meaningful choices with competitors. Ameritech's appeal to the federal court in this matter is also illustrative of Ameritech's attempt to overturn a pro-competitive state commission order duly entered under state law. This tactic of challenging state commission orders shows the self-serving nature of Ameritech's argument to the Eighth Circuit that the FCC has overreacted in taking policy making authority away from state commissions. See Exhibit JJP-8.

62. There cannot be a complete remedy for this problem as long as competitors must rely on Ameritech for essential inputs. AT&T attempted to mitigate this problem during the Michigan arbitration process with Ameritech by proposing private arbitration as an interim but binding alternative to the regular Commission processes. In its proposed Interconnection Agreement with Ameritech, AT&T requested arbitration to rectify interconnection disputes, subject to the Commission's overall final decision making. Ameritech opposed AT&T's recommendation. AT&T's proposal for private arbitration was rejected by the Commission.

63. If the checklist items are to be available in a fully functional manner, there must be a method for rapidly and definitively resolving the large number of disputes that will inevitably arise. AT&T and other competitors find themselves in a position where, notwithstanding promises from Ameritech and appropriate pro-competitive federal and state laws and Commission policies, Ameritech retains an improper competitive advantage due to the inability of

Commissions to require appropriate, assured and speedy implementation of the interconnection agreements and of the offerings Ameritech "promises to make" as the basis of its §271 application.

64. This implementation issue is of even greater concern as there are several essential services subject to the pending interconnection agreement between AT&T and Ameritech that are to be provided only by means of the Bona Fide Request ("BFR") process. In the case of the Michigan Interconnection Agreement, the BFR process applies to such services as:

- Platform w/o OS and DA;
- Custom Local Routing: Directory Assistance;
- Custom Local Routing: Operator Services;
- Loop/Network Combination;
- Switching Combination #2, #3; and
- Other New Combinations

Before it can be assumed that such services will be available to AT&T in a manner that satisfies the requirements of the Act, this Commission at least should monitor AT&T's initial BFR requests to be assured that Ameritech can be relied upon to respond to such requests in a proper manner.

65. Ameritech's interLATA entry strategy is in fact the latest incarnation of its "linkage" argument, an argument that Ameritech has made on many occasions. Ameritech's linkage argument has been repeatedly rejected by this and other states' Commissions, by reviewing courts, and by the Congress.

However, it appears that Ameritech continues to stubbornly cling to it and is again attempting to implement it here.

66. According to Ameritech, "linkage" means that Ameritech's entry into the interLATA market should be automatically and unquestionably linked to any new carrier entry into its local market. "Linkage" is an advantageous argument for Ameritech because of the relative ease by which it can enter the long distance market and because there is no dominant carrier that has the power to exclude or hinder competition in that market.

67. Ease of interLATA entry is in clear contrast to the difficulty in entering the local services market and the practical ability of Ameritech to hinder competition in that market. Ameritech predicted a year ago that it would not just enter the long distance market, but fully build out facilities region-wide for a relatively small amount of money. (See Page 2 of Exhibit JJP-4.) In contrast, the entry into the local services market is an uncertain enterprise at best, with many barriers to entry. Thus, starting together or "simultaneous entry" (called "linkage") is a formula for assuring that Ameritech maintains its local service advantage and extends it into the currently competitive interLATA market.

68. Ameritech officials also continue to rail against the "headstart" that it believes other carriers may receive in addressing the new "bundled services" marketplace. Exhibit JJP-10 is an editorial letter written by the President of Ameritech Michigan in which he indicates that while Ameritech is willing to

permit limited competition by small competitors, it will not permit a "headstart" by AT&T or MCI.

69. This Commission has heard and rejected the simultaneous entry argument before. Further, the Act also rejects "linkage" because the Act states that, among other things, before entering the interLATA market, Ameritech must fully implement a checklist of conditions to open its market to competition, must actually be providing access and interconnection to one or more facilities-based competitors and must otherwise demonstrate that interLATA entry would be consistent with the public interest, convenience and necessity.

V. IN ORDER TO SAFEGUARD THE PUBLIC INTEREST, THE
COMMISSION MUST RESPOND TO CHANGES IN THE
TELECOMMUNICATIONS INDUSTRY STRUCTURE

70. Up to this point, regulation of the local exchange industry has been designed with the assumption that an incumbent LEC like Ameritech is the only local service provider in its serving territory and it does not have an incentive to prefer itself over others because there are no competitors. Similarly, the long distance business has been regulated under the assumption that a LEC such as Ameritech is an "honest broker" and has no interest in whether AT&T, MCI or one of the other hundreds of long distance carriers actually wins a customer's long distance business. These assumptions must be now revisited, from the standpoint of their impact on both operations and resource investment, as part of the process

of establishing conditions whereby local competition will thrive and interLATA entry is appropriate.

71. Ameritech controls the local network and can operate it in a manner that prefers its own retail operations over those of its competitors. There are no regulatory systems in place now sufficient to make sure that Ameritech performs network functions on an even-handed basis. The promise of operational parity is one way to address this issue on paper, but it is also essential that the involved Ameritech employees follow nondiscriminatory processes that provide disincentives for inappropriate preference of Ameritech's own business.

72. It is not natural that an employee will seek to give up an advantage for his or her own business. Yet, in fulfillment of the Act, certain Ameritech employees must be required to do just that on virtually a daily basis. The same issue arose at divestiture when Judge Greene required a specific compliance program, including individual verifications and education, to assure that AT&T and the RBOCs did not engage in preferential treatment at the expense of MCI and other interexchange carriers. The risk of anti-competitive behavior is much greater here where Ameritech is both an essential supplier and a competitor.

73. Since 1984, it has been assumed that Ameritech would provide equal access on a non-discriminatory basis and not prefer one long distance carrier over another. These were the requirements of the Modification of Final Judgment, as well as the requirements in a number of states' general non-discrimination laws for monopoly local service providers. The concern underlying these requirements

is that the Bell Company control over monopoly local exchange markets could be extended into the long distance business. Thus, the FCC rules and state rules focused on processes to assure that Ameritech would not prefer MCI over Sprint, or AT&T over anyone, in implementing the equal access necessary for long distance service providers to reach Ameritech local service customers.

74. The situation changes completely when Ameritech has a vested interest in what choices customers make for interLATA service. Ameritech obviously is keenly interested in customers leaving AT&T if those customers are coming to Ameritech or leaving Ameritech for a competitor.

75. Unfortunately, the systems underlying and effectuating these customer choices continue to be controlled by Ameritech. Carriers must deal with Ameritech to have choices effectuated and Ameritech thereby has an opportunity to favor its own retail operation even in the matter of switching customers between carriers.

76. Thus, the current paradigm completely shifts when Ameritech has a direct financial interest in who the customer selects as his long distance service provider, that is, once Ameritech will itself be one of the long distance service providers. A look at what has happened in the limited area of intraLATA presubscription suggests that Ameritech may engage in conduct that would hinder competition in the interLATA long distance service market unless safeguards are in place.

77. A recent incident concerning AT&T's intraLATA promotion in the Chicago area and its customers' unsuccessful attempts to leave Ameritech and join AT&T illustrates the likelihood that Ameritech's self interest, corporate culture, and general employee behavior would prefer the welfare of Ameritech over its competitors.

78. As it has now been highly publicized, 150,000 customer change orders issued to Ameritech by AT&T -- Illinois customers attempting to move their toll service to AT&T -- were not processed by Ameritech from approximately August 6 to September 3, 1996. As the industry is now structured, only Ameritech, not AT&T, has the ability to effectuate those customer carrier change requests. Believing that Ameritech had failed to properly process these orders, AT&T filed an informal complaint with the Commission asking for an investigation. AT&T subsequently came forward and withdrew that complaint as soon as AT&T traced the order failure to AT&T's side of the interface. Ameritech extensively publicized the incident as an indication that AT&T's quality of service was deficient.

79. The relevant lesson from this incident, however, is not why the interface didn't work; instead, it relates to the fact that Ameritech personnel did not contact AT&T when they first became aware of the problem. With each passing day from August 6 into September (when AT&T discovered the problem that Ameritech already knew about), some 5,000 carrier change orders per day were not

getting through Ameritech's systems and customers attempting to leave Ameritech and select AT&T as their intraLATA carrier did not have those desires effectuated.

80. This lack of cooperation, concern for customer's wishes and fidelity --AT&T pays Ameritech as a vendor over \$1 million per year for the "PIC" change service -- occurred during a ferocious advertising campaign in which Ameritech used extensive radio, TV and print advertising in an effort to hold on to customers and dissuade them from trying other carriers' intraLATA services, especially from trying those of AT&T.

81. On such a competitive battle ground, in which the companies literally see each other as economic threats, it is simply too much to ask that incumbent carriers adhere to an honor system of operational parity without explicit safeguards, penalties, and the mandated implementation of responsibilities backed up by enforcement. We can all speculate, but it is my opinion that the same Ameritech personnel would not have stayed mute if the customer orders not being processed had been from customers wishing to leave AT&T or MCI and go to Ameritech.

82. There are other examples. We have received a number of comments from customers regarding their conversations with Ameritech's business office personnel when attempting to change from Ameritech's intraLATA service to AT&T's intraLATA service. In these specific instances, it is apparent that Ameritech employees are blurring and confusing, deliberately or not, the separate functions of a bottleneck local exchange network provider and those of an

intraLATA competitor. In some cases, customers calling Ameritech and asking to switch to AT&T as their intraLATA carrier, or asking why they have not been switched to AT&T, have been greeted with comments such as "Why do you want to switch? Ameritech is cheaper" which is clearly an attempt to promote the Ameritech retail business rather than performing an "honest broker" function as a local service provider. In other cases, customers were told they could stay with Ameritech, but if they wished to switch to AT&T, they would have to talk to a manager or supervisor. Furthermore, as experienced by Brooks Fiber Communications, a customer is "penalized" by Ameritech by being denied access to toll dialing plans in the event the customer chooses another provider for local service, even if the customer wishes to presubscribe to Ameritech for intraLATA tolls. (See Starkey Attachment H.)

83. Rectifying this situation requires a careful review on an ongoing basis of training materials Ameritech is using, of scripts and methods and procedures used by Ameritech sales representatives, and a monitoring program to make sure that Ameritech is not inappropriately instructing its representatives to dissuade customers from taking another service, or that employees are not taking it upon themselves to hinder customers attempting to leave their company for a competitor. In addition, employees operating these systems and their managers should individually be made aware of and acknowledge their non-discrimination obligations and the penalties for noncompliance. This mechanism was used at divestiture to enforce MFJ obligations.

84. Ameritech must make investments in the competitive infrastructure and in the other resources that all competitors depend upon if competitors are to have the ability to design services that are sufficiently attractive to lure customers from their historic incumbent provider. In this regard, AT&T has serious concerns over the service quality that Ameritech is currently providing to local service and access customers because it appears to reflect a lack of commitment in this area. Competitors clearly would be disadvantaged by a failure to invest in such resources.

85. AT&T has documented a severe drop-off in the quality of the dedicated access service (DS-0, DS-1) that Ameritech provides AT&T in terms of installation intervals, repair, and other items. AT&T has filed a complaint with this Commission on the issue, which describes the Michigan aspect of a region-wide (including Illinois) degradation of special access service quality. I attach that complaint as Exhibit JJP-11 to my testimony.

86. The prospect of local competition does not itself remove the "bottleneck" --those essential local exchange service network facilities and functions that provide Ameritech the capability of hindering competitors in dozens of ways on a day-to-day basis. The Act attempts to establish conditions that will lead to erosion of the bottleneck, but that can only occur if the duties it imposes are clearly understood and backed up by swift and sure enforcement. Unfortunately, the Act also greatly increases the incentive that Ameritech has to use its position

to protect its local service dominance and to prefer itself in the long distance business.

VI. OTHER RELATED ISSUES

87. A strong connection exists between the charges set by Ameritech for the use of its network and the development of competition. Ameritech's rates for both unbundled network elements and the access used to provide long distance service must be set at cost or competitors will be thwarted in their efforts to provide viable service alternatives.

88. The FCC has also affirmed "that access charge reform is intensely interrelated with the local competition rules" (First Report and Order, ¶8.) and that "in order to achieve pro-competitive, deregulatory markets for all telecommunications services" action must be taken to "move access charges to more cost-based and economically efficient levels." (First Report and Order, ¶716). Moreover, in its Notice of Proposed Rulemaking regarding Access Charge Reform, the FCC reiterated the interrelationship by stating "We commence this review...to determine the extent to which we must revise these rules to take account of the local competition and Bell entry provisions of the 1996 Act and state actions to open local networks to competition...." (CC Docket No. 96-262, ¶5) If Ameritech becomes an interLATA long distance service provider prior to reform of access charges, it will have an insurmountable advantage, holding all else equal, due to its continued ability to charge its competitors prices above cost for carrier access services. In that event, Ameritech can make its advertising claim -- that it

will be cheaper on price than all competitors over the long term -- come true solely because it controls the bottleneck and is able to extract supra-competitive profits from that exchange business to protect its long distance business and further its long distance strategy.

89. The United States Justice Department as well as the FCC has recognized the necessary connection between competition and access reform and the great importance of resolving access issues before interLATA entry. David Turetsky, Assistant Attorney General of the Justice Departments Antitrust Division has identified the issue of whether "the access charge structure [will] permit interexchange carriers to compete on an equal footing with the Bell" Company as one of the questions that must be addressed when evaluating a §271 application. (Turetsky speech before the Commissions Committee at the NARUC Summer Meeting, July 22, 1996.)

90. In addition, the Act places strict requirements on what Ameritech can do in the long distance business. In particular, for at least the first three years of operation, Ameritech would be permitted to provide in-region interLATA service only through a separate affiliate. Ameritech is largely silent in this proceeding concerning how its affiliates will operate and what the direct and indirect relationships will be between all Ameritech entities and its local exchange operations. As part of its effort to develop a factual record that can be used for evaluating a 271 Application, the Commission should assemble a factual record in this case on this issue as well.

91. Similarly, the non-discrimination obligations on Ameritech's local service operations require a demonstration that the Ameritech affiliate is not receiving a preference in terms of costs, shared assets, planning or customer information as compared to what is available to competitors. The FCC addressed these in its First Report and Order in CC Docket No. 96-149, released on December 24, 1996 ("Separation Order"). In that Order, the FCC promulgated rules and policies implementing and clarifying the non-accounting structural separation provisions and nondiscrimination safeguards set forth by Congress in Sections 271 and 272 of the Act. As the FCC said:

These safeguards are intended both to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive markets, such as interLATA services and equipment manufacturing, and to protect competition in those markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter (Separation Order, para. 6)

Further, the FCC's nondiscrimination requirements are broad and strict:

"We conclude therefore that, pursuant to section 272(c)(1), a BOC must provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions." Id., para. 202.

The FCC also acknowledges that "individual states may regulate such integrated affiliates differently than other carriers." Id., para. 317.

92. While information regarding Ameritech's intentions regarding its compliance with the safeguards of Section 272 were discussed in the Ameritech Communications, Inc. ("ACI") certification proceedings in this state, in light of

Ameritech's request for interLATA entry in Michigan, Ameritech should now provide specific information to this Commission regarding its compliance with the requirements of the Act. This is especially important in light of information recently developed in ACI certification proceedings in other states.

93. Let me mention just a couple of examples based on the limited information that is available. It recently emerged in the ACI proceedings in Illinois and in Ohio that Ameritech has constructed a fiber optic SONET ring in Chicago and Detroit, and that ACI's switching equipment is located on those rings. That is, Ameritech's most advanced facilities in Chicago and Detroit apparently consist of a dedicated Ameritech fiber optic ring and ACI switching. ACI contends that the dedicated fiber ring facilities were procured out of Ameritech tariffs, but has not identified the tariff. These facilities were constructed, apparently during 1995, when, by its own admission, ACI had at most a handful of Ameritech employees "dedicated" to ACI. Apparently, no payment has changed hands; Ameritech/ACI witnesses have indicated that they are simply keeping account of these transactions. (In fact, the "new entrant," ACI, reportedly has been the beneficiary of at least \$138 million in advances from Ameritech Corp.)

94. A host of questions arise, including what access to Ameritech Michigan's local service plans and network plans ACI had when these facilities were built; whether ACI has a separate franchise with the municipalities in question, and generally, whether and when ACI will operate in any meaningful sense independently of Ameritech Michigan; whether and when the transactions